

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2008-102616-001 SE

10/18/2013

HON. SAM J. MYERS

CLERK OF THE COURT

A. Ocanas

Deputy

STATE OF ARIZONA

ANDREA L KEVER

v.

CHRISTOPHER LEE SMITH (001)

CHRISTOPHER LEE SMITH
#252757 ASPC LEWIS STINER
P O BOX 3100
BUCKEYE AZ 85326
MELISSA HO

COURT ADMIN-CRIMINAL-PCR

MINUTE ENTRY

The Court has received and considered Defendant Christopher Smith's Petition for Post-Conviction Relief filed on July 3, 2013, the State's Response thereto, and the Reply. The Court has also considered the affidavits of Defendant, Tom Henze, and James Gaither. The Defendant's Petition alleges Defendant's assigned counsel was ineffective by not properly interviewing witnesses, agreeing to a stipulation regarding a prior DUI conviction, and by not properly preparing or using expert James Gaither.

The Court has reviewed the record in this matter. In particular, the Court has considered Dr. Gaither's testimony and Dr. Gaither's affidavit. In his affidavit, Dr. Gaither stated that the lack of pretrial contact with Defendant resulted in lesser credibility and that he was unable to testify "to the best of my ability".

With respect to Defendant's claims, the PCR Petition does not demonstrate that counsel's performance fell below an objective standard of reasonableness as defined by prevailing professional norms, or that Defendant suffered prejudice due to counsel's performance. The

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Court agrees with the citations to the record contained in the State's response, particularly the references to Dr. Gaither's testimony regarding the basis for his opinions in this case. As a result, the Court finds that the Defendant does not demonstrate a colorable claim of ineffective assistance of counsel.

IT IS ORDERED denying Defendant's Petition for Post-Conviction Relief.

/s/ SAM J. MYERS

JUDGE OF THE SUPERIOR COURT

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>.
Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.